IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 20689 of 2004

Between:

1 The Union of India, rep by Secretary to Government Department of Posts, Ministry of Communications, Dak Sadan, New Delhi.
2 The Chief Postmaster General, Andhra Pradesh Circle, Department of Posts GPO, Abids, Hyderabad.
3 The Postmaster General, Vijayawada Region, Vijayawada, Krishna District, Andhra Pradesh.
4 The Superintendent of Post Offices, Eluru Division, Eluru, West Godavari District, Andhra Pradesh - 534 007.
5 The Assistant Superintendent of Post Offices, Jangareddigudem Sub-Division, Jangareddigudem - 534 447, West Godavari District.

..... PETITIONERS

AND

1 P. Prasada Rao, S/o. Late Sri P. Satyanarayana,
r/o. Challachintalapudi PO a/w Bhimadole SO West Godavari District.
2 Sri Podium Gangulu, EDBPM Ramannapalem BO, Kannapuram SO-534 311
Jangareddigudem Sub Division, Eluru Division, West Godavari District, Andhra Pradesh.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari, or any other appropriate writ, order or direction, calling for the records pertaining to O.A.No. 1320 of 2003 dated 20-8-2004 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the

same as void *ab initio*, null and void and non-est in the eye of law.

Counsel for the Petitioners: MR.A.RAJASHEKAR REDDY (SC FOR CG)

Counsel for the Respondent No.1:Mr.V.VENKATESWAR RAO FOR R1.

Counsel for Respondent No.2: ----------

The Court made the following:

ORAL ORDER: (By GB.J.)

The Writ Petition is filed by the Union of India challenging the order passed by the Central Administrative Tribunal (for short Tribunal) in OA.No.1320 of 2003, dated 20.8.2004.

2. Though the matter has a chequered career, we are not inclined to refer all the details. Suffice it to say that in pursuance of a Notification made by the authorities for filling up the post of EDBPM., Ramannapalem, the 1st respondent herein was selected on 26.10.1999. However, the said selection came to be terminated by an order passed by the Superintendent of Post Offices, Eluru Division, on 20/21.3.2000. The first part of the order reads thus:

> "In pursuance of R.O., Vijayawada-2, lr.No.ST/30-33/I/90-96, dated 14.3.2000 your selection to the post of EDBPM, Ramannapalem BO a/w Kannapuram SO is terminated"

In the second para it is stated as follows:

> "Please intimate whether you are willing to be appointed as ED Branch Postmaster any where in the division. If so, please send a representation of your willingness or otherwise within a week".

In pursuance of the offer made under second para, the 1st respondent was appointed as EDBPM on provisional basis at Munduru. But, however, the said appointment was also terminated on the ground that the regular selected candidate was posted. Thereafter, it appears that the 1st respondent raised contempt proceedings, in which he was not successful. Ultimately he again challenged the order of termination in OA.No.1320 of 2003 after a lapse of nearly three years. The Tribunal, after considering the matter, held that the termination was not valid and accordingly disposed of the OA with the following directions:

> "In the result, this OA is disposed of directing the official respondents to provide appointment to the applicant on regular basis as EDBPM in any of the existing vacant posts in Eluru Division presently or in future

as per the unconditional offer of appointment made by the 4th respondent in his letter dated 20/21.3.2000, within a period of two months from the date of receipt of a copy of this order".

The above said order came to be challenged in this Writ Petition.

3. The learned Standing Counsel for the Central Government, appearing for the petitioners, submits that the order passed by the Tribunal is wholly erroneous and contrary to law. He submits that the 1st respondent did not challenge the termination order at an earliest point of time. It is only after his unsuccessful attempts, he challenged the said order in 2003. He further submits that the Tribunal ought to have dismissed the application on the ground of laches and delay. Further, the petitioner having accepted the employment offered under para 2 of the order, he is ineligible to challenge the termination. Moreover, for the post notified for Ramannapalem, the next meritorious candidate was already appointed consequent on the termination of the services of the 1st respondent and therefore the Tribunal has committed an error apparent on the face of the record.

4. On the other hand the learned counsel for the 1st respondent submits that the 1st respondent cannot be penalized for the illegalities or irregularities committed by the Department. When he reported for duty at Ramannapalem, the Tribals did not allow him and this fact was also noticed by the authorities and consequently they offered appointment at Munduru on provisional basis. Under those circumstances, though the 1st respondent did not challenge the earlier order of termination, that does not mean he has precluded from challenging the same. He further submits that when the 1st respondent was duly selected, termination on the ground of non-implementation of the appointment order cannot be put against the interest of the 1st respondent. Therefore the order passed by the Tribunal is quite legal and valid.

5. Having heard the learned counsel for both parties, we are unable to accept the contentions raised by the learned counsel for the 1st respondent. Admittedly the notification was issued for the post of EDBPM, Ramannapalem and though the said selection was terminated by an order dated 21.3.2000, 1st respondent did not challenge the same. On the other hand, forfeiting his right to claim the employment as EDBPM, Ramannapalem, he accepted the alternate offer on provisional basis made by the Department as EDBPM, Munduru. In such a situation, it is wholly

inappropriate on the part of the 1st respondent to again resile back from the original commitment and challenge the order of termination dated 21.3.2000. The order of Tribunal directing the authorities to appoint 1st respondent in any other place as EDBPM in regular post is wholly unsustainable, as, for the said appointment a separate selection is required, viz., a notification has to be issued and thereafter regular selection has to take place. Under those circumstances, we are of the considered view that the order of the Tribunal is not sustainable and accordingly it is set aside.

6. Though the learned counsel for the 1st respondent tried to convince this Court that the 1st respondent has been unduly denied employment, and for which the Tribunal made an effort to compensate the same by ordering re-appointment in any other place in Eluru Division, that cannot be at the cost of the violation of the rules of appointment. Thus, viewed from any angle we do not find the order of the Tribunal is sustainable in law. Accordingly it is set aside.

7. In the result, the Writ Petition is allowed. No costs.

(G.BIKSHAPATHY, J.)

23rd November, 2004.

(P.S.NARAYANA, J.)

SSR

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